

IN THE DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL MILLER

Petitioner,

v.

COUNTY OF LANCASTER, *et al.*,
Respondents.

Civ. No.: 5:24-cv-05338-JFL

Judge Joseph F. Leeson, Jr.

PLAINTIFF’S MOTION FOR LEAVE TO FILE A SURREPLY BRIEF

Plaintiff Michael Miller, pro se, moves this Honorable Court for leave to file a surreply brief addressing new and procedurally improper arguments raised for the first time in Defendants’ reply brief (Doc. 20). Granting this motion is necessary to ensure procedural fairness, protect Plaintiff’s rights as a pro se litigant, and promote judicial efficiency by providing the Court with a complete record.

I. Basis for the Motion

1. Defendants Raise New Arguments and Authorities:

Defendants’ reply brief (Doc. 20) introduces new arguments and case law not presented in their initial motion to dismiss (Doc. 18), including:

- Expanded reliance on **res judicata** and **collateral estoppel**, including new case citations and factual interpretations that require evidentiary development.
- Improper invocation of **judicial notice** to introduce contested procedural facts from prior litigation.
- Renewed request for **pre-filing restrictions**, unsupported by evidence and contradicted by Defendants’ own conduct.
- New arguments and case law challenging the enforceability of Plaintiff’s **Help America Vote Act (HAVA)** claims under § 1983.

These new issues go beyond the scope of Defendants’ initial motion and must be addressed to prevent undue prejudice to Plaintiff.

2. Rules and Authorities Supporting the Motion:

- Rule 7(b)(1) of the Federal Rules of Civil Procedure requires motions to “state with particularity the grounds for seeking the order.” Defendants’ failure to present these arguments in their initial motion violates this rule and denies Plaintiff the opportunity to respond.
- Courts in the Third Circuit prohibit the introduction of new arguments in reply briefs. See *United States v. Martin*, 454 F. Supp. 2d 278, 282

(E.D. Pa. 2006) (“It is improper for a party to present a new argument in [a] reply brief.”); *Nagle v. Alspach*, 8 F.3d 141, 143 (3d Cir. 1993) (“Arguments raised for the first time in a reply brief are insufficient to preserve the issue for review.”).

- Courts have discretion to grant leave for a surreply to address new issues raised in a reply brief. See *Cureton v. Nat’l Collegiate Athletic Ass’n*, 252 F.3d 267, 276 (3d Cir. 2001) (noting the court’s discretion to allow further briefing when necessary for fairness).

3. Necessity of the Surreply:

- Defendants’ new arguments and authorities require a response to ensure fairness and prevent prejudice. Without a surreply, the Court risks relying on arguments Plaintiff has not had an opportunity to address, which would undermine procedural fairness and judicial integrity.
 - Plaintiff’s proposed surreply is narrowly tailored to address only the new arguments and authorities raised in Defendants’ reply brief. It does not repeat arguments already made in Plaintiff’s opposition brief (Doc. 19).
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II. Legal Standard

4. Grounds for Granting Leave to File a Surreply:

- Rule 7(b)(1) requires all arguments supporting a motion to be presented with particularity in the initial motion. Reply briefs are limited to responding to arguments raised in opposition and cannot introduce new issues. See *Martin*, 454 F. Supp. 2d at 282; *Nagle*, 8 F.3d at 143.
- Rule 12(b)(6) motions are confined to the sufficiency of the allegations in the complaint, and courts cannot resolve factual disputes or consider affirmative defenses not apparent on the face of the complaint. See *Phillips v. County of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008); *Robinson v. Johnson*, 313 F.3d 128, 135 (3d Cir. 2002).
- A surreply is appropriate where a reply brief introduces new arguments, authorities, or facts not previously raised, as this ensures fairness and judicial economy. See *Cureton*, 252 F.3d at 276.

III. Efforts to Seek Concurrence

5. Efforts to Obtain Concurrence:

- On December 8, 2024, Plaintiff contacted Defendants' counsel to seek concurrence for this motion pursuant to Local Rule 7.1. Defendants' counsel responded the same day and indicated that Defendants do not concur in this motion.
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IV. Request for Relief

WHEREFORE, Plaintiff moves that this Honorable Court:

1. Grant leave for Plaintiff to file the attached surreply brief (Exhibit A) in response to Defendants' reply brief (Doc. 20);
2. Consider the arguments raised in the surreply to address new issues raised by Defendants and ensure procedural fairness; and
3. Grant such other relief as this Court deems just and proper to promote fairness, procedural compliance, and judicial efficiency.

Respectfully submitted pro se,

/s/ Michael Miller

Michael Miller

108 N. Reading Road, F, 246

Ephrata, Pennsylvania 17522

Dated: December 9, 2024

IN THE DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL MILLER Petitioner, v. COUNTY OF LANCASTER, <i>et al.</i> , Respondents.	Civ. No.: 5:24-cv-05338-JFL Judge Joseph F. Leeson, Jr.
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ORDER

AND NOW, this ____ day of _____, 2024, upon consideration of Plaintiff's Motion for Leave to File a Surreply Brief, and any response thereto, it is hereby ORDERED that:

1. Plaintiff's Motion for Leave to File a Surreply Brief is GRANTED;
2. The Court accepts the attached Surreply Brief (Exhibit A) for filing and will consider the arguments therein in addressing Defendants' Motion to Dismiss; and
3. The Clerk of Court is directed to docket the Surreply Brief attached as Exhibit A to Plaintiff's Motion for Leave.

IT IS SO ORDERED.

BY THE COURT:

Judge Joseph F. Leeson, Jr.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served by e-filing a true and correct copy of the foregoing document to the following:

Sarah Hyser-Staub PA I.D. No. 315989
Lauren Anthony, PA I.D. No. 324557
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
717-232-8000
ssaub@mcneeslaw.com
lanthony@mcneeslaw.com

Attorneys for Defendants

Respectfully Submitted,

/s/ Michael Miller
Michael Miller
108 N. Reading Rd., Ste F, 246
Ephrata, Pennsylvania 17522
717-388-0163
reaganfive@protonmail.com

Dated: December 9, 2024